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Attorneys for Defendants

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SEAN L. GILBERT, *et al.*,

Plaintiffs,

v.

BANK OF AMERICA, N.A., *et al.*,

Defendants.

Case No. 13-cv-01171-JSW

**STIPULATION AND ~~PROPOSED~~
ORDER FURTHER STAYING
PLAINTIFF KEEYA MALONE'S
CLAIMS**

Date Action Filed: October 16, 2013

1 Plaintiff Keeya Malone, Defendant David Johnson, Defendant Kirk Chewning, and Defendant
2 Vector Capital IV, LP (“Vector”), by and through their respective counsel of record, hereby stipulate as
3 follows:

4 On March 3, 2015, Plaintiffs Sean Gilbert, Kimberly Bilbrew, and Keeya Malone (collectively,
5 “Plaintiffs”) filed a Second Amended Complaint adding, in relevant part, claims against Defendants
6 Kirk Chewning and Vector. Docket No. 176. Plaintiffs allege that Mr. Chewning, Vector, and Mr.
7 Johnson jointly owned and controlled Cash Yes. *Id.* ¶ 74. According to Plaintiffs, as a result of their
8 ownership and control over Cash Yes, Mr. Chewning, Vector, and Mr. Johnson are liable to Plaintiffs
9 under California’s Deferred Deposit Transaction Law, California’s Unfair Competition Law, and RICO
10 for assisting unlicensed lenders in the origination of short-term loans. *Id.* ¶¶ 70-90, 129-147.

11 On March 13, 2015, Defendant David A. Johnson filed a motion to compel arbitration of
12 Plaintiffs Sean Gilbert’s and Kimberly Bilbrew’s claims against him. Docket No. 178. Mr. Johnson
13 did not move to compel arbitration of Ms. Malone’s claims because her loan application was allegedly
14 rejected by Cash Yes. On April 8, 2015, the Court ordered Mr. Gilbert’s and Ms. Bilbrew’s claims
15 against Mr. Johnson to arbitration and stayed this proceeding against Mr. Johnson pending the outcome
16 of the arbitration. Docket No. 186.

17 On April 9, 2015, Mr. Gilbert, Ms. Bilbrew, Mr. Johnson, Mr. Chewning and Vector stipulated
18 that Mr. Gilbert’s and Ms. Bilbrew’s claims against Mr. Chewning and Vector would also be subject to
19 the order compelling arbitration, and on April 10, 2015, the Court ordered the claims against Mr.
20 Chewning and Vector to arbitration. Docket No. 188.

21 On April 8, 2015, the Court issued an Order to Show Cause requiring Ms. Malone to show why
22 her claims against Mr. Johnson should not be dismissed. Docket No. 186. Thereafter, the Court
23 requested submissions from both Ms. Malone and Mr. Johnson on the Order to Show Cause. Docket
24 No. 194. After considering the briefs filed by Ms. Malone (Docket Nos. 193, 195, 197) and Mr.
25 Johnson (Docket No. 196), the Court ruled that Ms. Malone’s claims against Johnson would not be
26 dismissed.

27 On June 4, 2015, Ms. Malone, Mr. Johnson, Mr. Chewning, and Vector stipulated and this
28 Court ordered that Ms. Malone’s claims be stayed for ninety (90) days pending the outcome of the

1 arbitrations of Mr. Gilbert's and Ms. Bilbrew's claims. The requested stay was intended to allow the
 2 parties to avoid the burden of additional motion practice and an additional arbitration proceeding.

3 On September 4, 2015, because Mr. Gilbert and Ms. Bilbrew's arbitrations were still pending,
 4 Ms. Malone, Mr. Johnson, Mr. Chewning, and Vector again stipulated and this Court ordered that Ms.
 5 Malone's claims be stayed for one-hundred and twenty (120) days

6 Currently, Ms. Gilbert and Ms. Bilbrew's arbitrations are still pending. Accordingly, the parties
 7 request an extension of the stay of Ms. Malone's claims for an additional one-hundred and twenty
 8 (120) days.

9 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between Keeya Malone, David
 10 Johnson, Kirk Chewning, and Vector, through their respective counsel, that Ms. Malone's claims are
 11 further stayed for one-hundred and twenty (120) days. Upon expiration of the one-hundred and twenty
 12 (120) day period, the parties may request the Court to extend the stay of Ms. Malone's claims, or
 13 Defendants may request an order compelling arbitration of Ms. Malone's claims. Ms. Malone will not
 14 assert that this stay operates in any way to limit Defendants' right to request arbitration of Ms.
 15 Malone's claims.

16 Dated: January 5, 2016

AKIN GUMP STRAUSS HAUER & FELD LLP

17 By /s/
 18 Reginald D. Steer
 19 Ashley B. Vinson
 20 Danielle C. Ginty
 Attorneys for Defendants David A. Johnson and
 Kirk Chewning

21 Dated: January 5, 2016

KIRKLAND & ELLIS LLP

22 By /s/
 23 Mark McKane
 24 Michael Esser
 Attorneys for Vector Capital IV, LP

25 Dated: January 5, 2015

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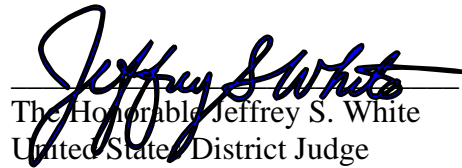
26 By /s/ Jeffrey Wilens
 27 Jeffrey Wilens
 28 Attorneys for Plaintiffs

~~PROPOSED~~ ORDER

The Court, having considered the above stipulation between the parties, and good cause appearing, hereby ORDERS that the stay of Keeya Malone's claims against David A. Johnson, Kirk Chewning, and Vector Capital IV, LP is extended for one-hundred and twenty (120) days.

IT IS SO ORDERED.

Dated: January 6, 2016


The Honorable Jeffrey S. White
United States District Judge